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## **Advisory Opinion 09-002**

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2008). It is based on the facts and information available to the Commissioner as described below.

### **Facts and Procedural History:**

On December 15, 2008, the Information Policy Analysis Division (IPAD) received an email from Chad Staul, Assistant City Attorney, City of Saint Paul. In his email, Mr. Staul asked the Commissioner to issue an advisory opinion regarding the classification of certain data.

IPAD, in a letter dated December 15, 2008, invited Teri Anderson, Attorney for Xcel Energy, to submit comments. On December 29, 2008, IPAD received a response from Ms. Anderson.

A summary of the facts is as follows. In his opinion request Mr. Staul wrote:

I am requesting a formal opinion to re-evaluate IPAD's opinion 08-022 which I requested regarding utility shut off data. I am asking that the same question be answered in a formal opinion in light of Minn. Stat. 216B.0976. That statute appears to cover utility shut off data by classifying it as private. The facts for this opinion are found in Opinion 08-022.

### **Issue:**

Based on Mr. Staul's opinion request, the Commissioner agreed to address the following issue:

In Advisory Opinion 08-022, the Commissioner of Administration opined that certain data supplied by private electric companies (the property addresses for properties that have gone without power for more than thirty days and the reason for the power shut off) are public. In light of a new law enacted during the 2008 Legislative Session, Minnesota Statutes, section 216B.0976, can the City still rely on 08-022?

### **Discussion:**

In Advisory Opinion 08-022, the facts were that Saint Paul Legislative Code Chapter 46 required private (non-government) electric companies to provide to the City a notice whenever service was discontinued for any reason. According to Minnesota Statutes, Chapter 13, once the property address and reason for discontinuation were in the City's possession, they were

government data. The Commissioner then opined that because no provision classified these data as not public, they were public. (Minnesota Statutes, section 13.03, subdivision 1.)

The question Mr. Staul now asks is how Minnesota Statutes, section 216B.0976 (enacted during the 2008 Legislative Session), impacts the conclusion reached in 08-022. Subdivision 1 of 216B.0976 requires utilities, including Xcel Energy to, upon written request from a city, submit each October 15 and November 1, a report of the addresses of properties currently disconnected (from gas or electric service) and the date of the disconnection. In addition, upon written request of a city, between October 15 and April 15, daily reports must be made available of the address and date of any newly disconnected properties.

Section 216B.0976, subdivision 2, provides that the data utilities submit to a city pursuant to section 216B.0976 are classified as not public.

Thus, while the new law classifies, as not public, data that non-government electric and gas utilities submit to a city under subdivision 1 of section 216B.0976, it is silent as to the classification of data a non-government utility submits to a city under different circumstances, such as the Saint Paul ordinance the Commissioner discussed in Advisory Opinion 08-022.

In her comments to the Commissioner, Ms. Anderson wrote:

...[Advisory Opinion 08-022] concluded that certain data provided to Minnesota cities by [non-public] electric companies are public. Based on various amendments in 2008, I disagree with this opinion.

Minnesota law requires public utilities to make available to any requesting city, the address of properties currently disconnected and the date of the disconnection during the state's "Cold Weather" period....This statute also specifies that all data on customers so provided to the cities is [not public data].

Because the 2008 amendments specifically classify heat-affected disconnection by a public utility as [not public data], Advisory Opinion 08-022 should be re-evaluated.

Minnesota Statutes, Chapter 645, discusses interpretation of statutes. Section 645.17, states that when ascertaining legislative intent, it is presumed the Minnesota Legislature does not intend a result that is unreasonable.

Here, one provision - 13.03, subdivision 1 - provides that property addresses and reasons for shutoff submitted pursuant to Saint Paul's ordinance are public because nothing specifically classifies the data as not public. The other provision - section 216B.0976, subdivision 2 - provides that when Saint Paul makes specific written requests for the data between October 15 and April 15, and the utilities provide the data, the data are not public.

Thus, if Saint Paul continues to enforce its ordinance and never makes written requests to the utilities, the data submitted by the utilities would be public. But if City X, that has no ordinance, makes requests to the utilities between October 15 and April 15, similar data maintained by City X data would be protected. This result seems unreasonable in that it creates a lack of uniformity in how the data are classified from city to city. Given the language in section 645.17, the Legislature did not intend such a result.

Because section 216B.0976 is more specific and was enacted more recently than section 13.03, subdivision 1, the Commissioner concludes that if Saint Paul continues to require compliance with its ordinance, data submitted by non-government utilities between October 15 and April 15 are not public.

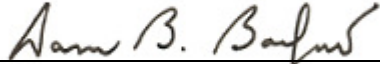
The Commissioner acknowledges this may mean that even though the address and reason for disconnection about a particular property reported in December are not public, data about the same property reported in August are public. The Commissioner strongly encourages the Legislature to re-visit the issues discussed here to ensure this is the result it intended.

**Opinion:**


Based on the facts and information provided, my opinion on the issue that Mr. Stahl raised is as follows:

In light of the new language in Minnesota Statutes, section 216B.0976, the City of Saint Paul should not rely on the result reached in Advisory Opinion 08-022 and should treat the property address and reason for shut off data as not public when those data are reported between October 15 and April 15.

Signed:

  
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Dana B. Badgerow  
Commissioner

Dated:

  
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January 21, 2009